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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,479	02/22/2002	Paul Giampavolo	P/1759-85	4324
2352	7590	03/09/2005	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			CHAN, KO HUNG	
			ART UNIT	PAPER NUMBER

3632

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/082,479

Applicant(s)

GIAMPAVOLO, PAUL

Examiner

Korie H. Chan

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-9, 11, 13-16, 18-20, 22, 24 and 26-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-9, 11, 13-16, 18-20, 22, 24, 26-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claims 1-5,7-9,11,13-16,18-20,22,24 and 26-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant's recitation of the hook opening configured to have a dimension sufficiently near a diameter of a predetermined garment hanging rod throughout all independent claims are indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

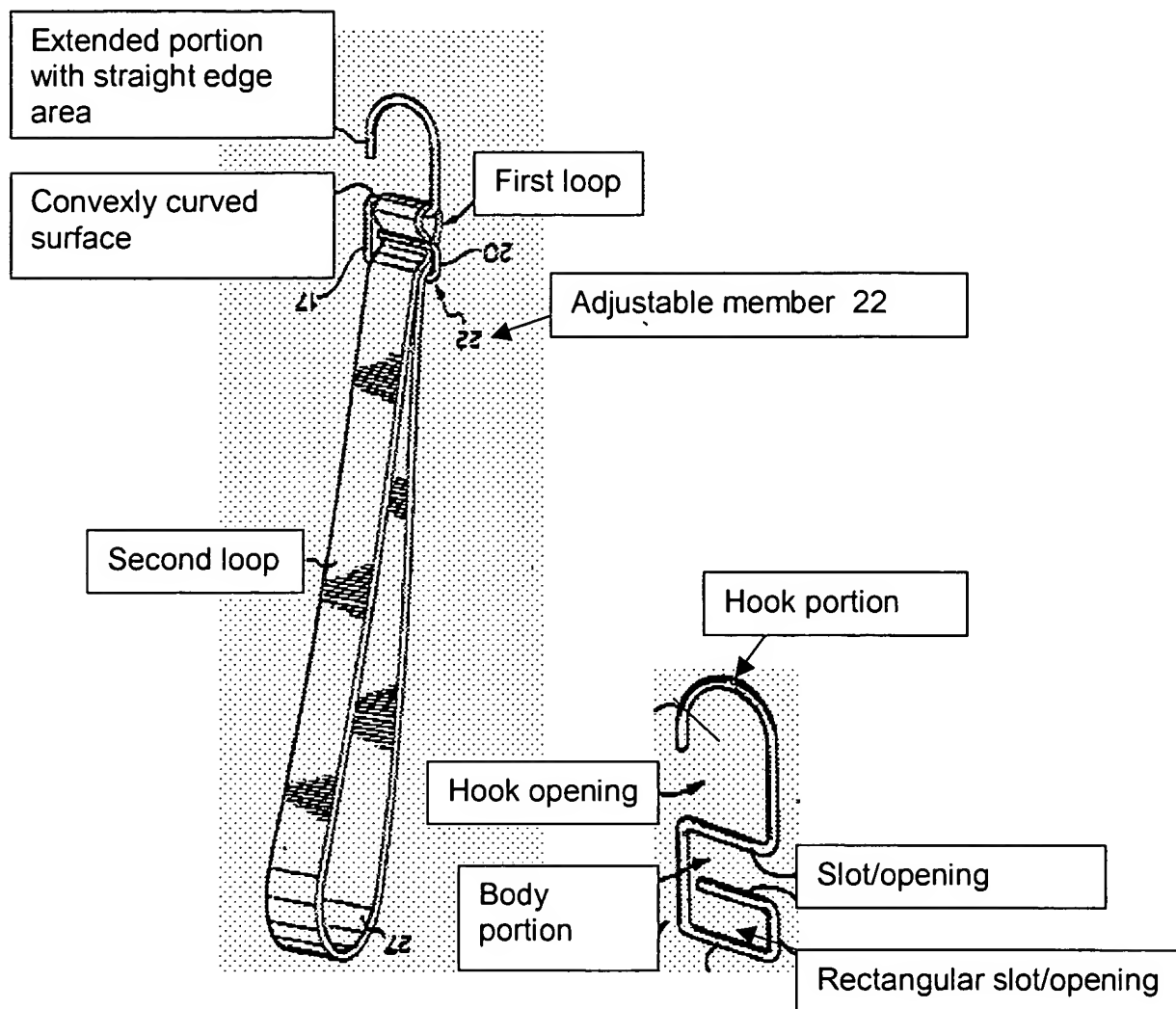
A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7, 8, 18-20, 22, and 26-28 stand rejected under 35 U.S.C. 102(b) as being anticipated by Bruhm (US patent no. 5,325,568). Bruhm discloses all the claimed features of applicant's invention (see illustration below).

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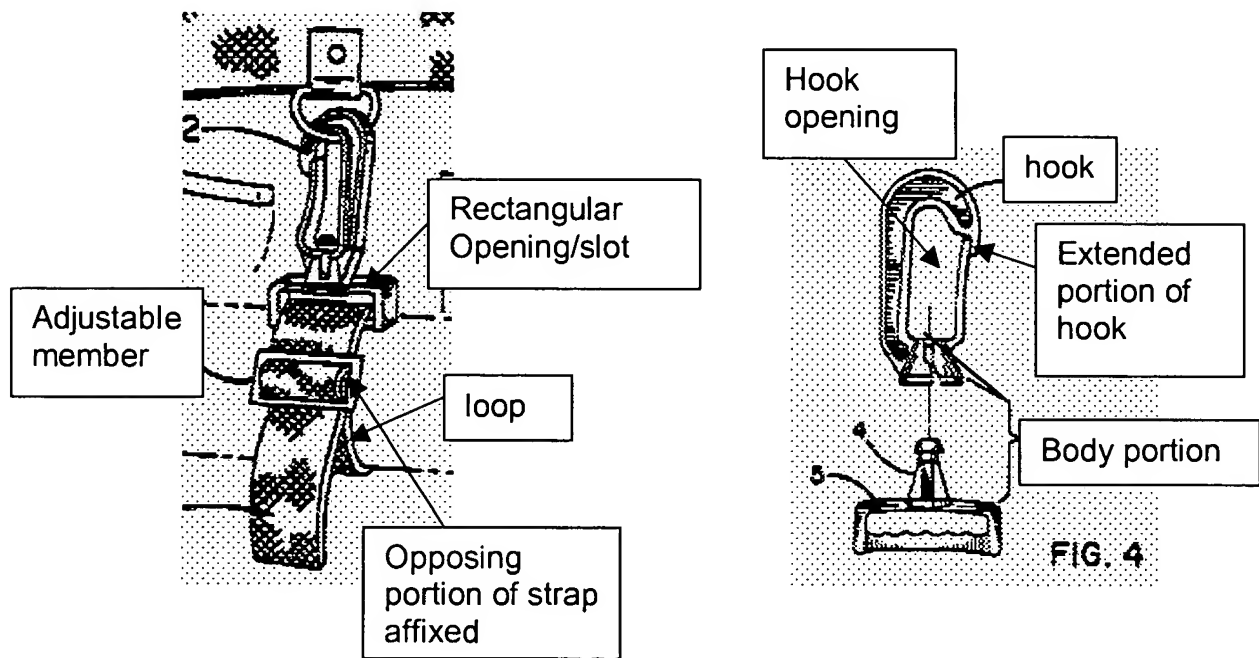


Again applicant's intended usage "configured...to be carried directly on a garment hanging rod" has not been accorded patentable weight for the reason that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, Bruhm's

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hook portion is capable of receiving predetermined size rod for hanging garments and the hook opening having a dimension capable of receiving a diameter of a rod near the dimension of the hook opening to impede passage of the rod through the hook opening.

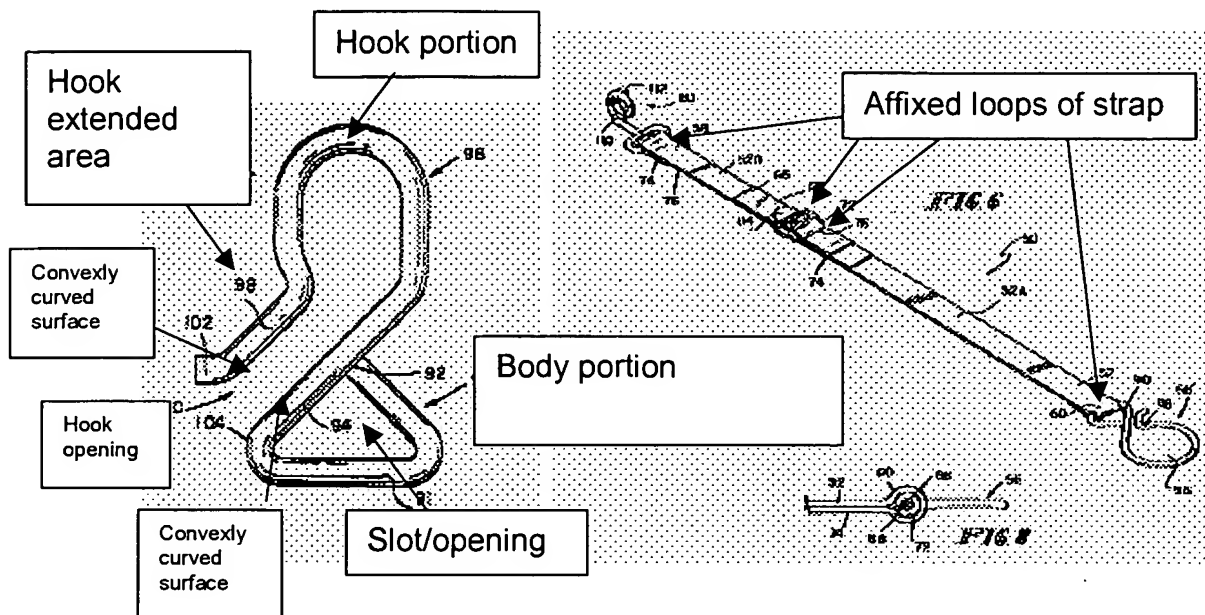
Claims 1, 7, 8, and 26 stand rejected under 35 U.S.C. 102(b) as being anticipated by Smrt (US patent no. 5,664,712). Smrt discloses all the claimed features of applicant's invention (see illustration below).



Similarly, Smrt's hook is capable of receiving a diameter of a rod near the dimension of the hook opening to impede passage of the rod through the hook opening.

Claims 1, 5, 7, 9, 11, 15, 18-20, 22, 24, and 28-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Tinklepaugh et al (US patent no. 6,422,521). Tinklepaugh discloses all the claimed features of applicant's invention (see illustration below).

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Note the hook is made of circular cross-section and its outer surface is convexly curved.

Regarding applicant's recitation of intended use "configured to have a dimension near a diameter of a predetermined garment hanging rod", for a rod of diameter near dimension of hook opening, or as in claim 29 wherein the long axis of the device is at an angle relative to the rod are not of patentable weight for the reason that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, Tinklebaugh et al's hook portion is capable being supported on a garment rod of a diameter near the dimension of the hook opening such that the hook opening will open wider when engaging the rod and narrower once a rod has passed the hook opening.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 11, and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruhm'568 in view of Cardenas (D405,965). Bruhm disclosed all the claimed features of applicant's invention as discussed above except for the tip of the hook extended region as having convex surface. Cardenas demonstrates providing a sleeve at the hook extended region of the hook member wherein the tip of the sleeve is of convexly curved surface. The provision of sleeve at the tip of the hook member for the purpose of preventing marring or injury to the user is conventional and well-known. It would have been obvious to one of ordinary skill in the art to have provided Bruhm's hook extended region with a sleeve of convexly curved tip as taught by Cardenas for protecting the user and the surfaces to which the hook is connected.

Applicant's arguments filed 1/19/2005 have been fully considered but they are not persuasive. As discussed above, applicant's reference to the diameter of a hanger rod is not patentable over the art of record. In the above rejections, the hook members are all capable of supporting on a rod of near diameter to the opening of the hook members. Indeed, all hook members is capable of supporting on a predetermined rod of a near diameter to the opening. Such recitation is indefinite.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The remaining cited art of record further demonstrate hanger having slot of long dimension transversing the long axis of the hanger.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Korie H. Chan whose telephone number is 703-305-8079. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Korie H. Chan
Primary Examiner
Art Unit 3632

Khc
March 4, 2005